

Spark Energy, L.P.

Docket No. 07-0452

### Notice of Administrative Law Judge's Ruling

Notice is hereby given that the Administrative Law Judge has completed a preliminary review of the amended application filed by Spark Energy, L.P. ("Applicant" or "Spark") in Docket No. 07-0452, and hereby rules that a verified response, containing the information and clarifications described below, shall be filed with the Commission.

If filed electronically, this verified response shall be filed with the Chief Clerk of the Commission on or before October 11, 2007. If the filing is made by non-electronic means, then October 11, 2007 is a mailing date. Applicant shall serve a copy of its response on the Administrative Law Judge (syoder@icc.illinois.gov) and on Mr. Steve Hickey of the Commission (shickey@icc.illinois.gov). For purposes of doing so, October 11, 2007 is a receipt or "in hand" date, not later than 5:00 P.M., by electronic mail, Fax (217-524-8928) or otherwise.

#### **Subsection 451.30(a)**

Section 451.30(a) requires that Spark publish notice of its application for certification in the Official State Newspaper within 10 days following its filing, and file proof of the publication with the Clerk of the Commission. In paragraph 25, page 12 of the amended application, Spark states that it intends to comply with this requirement and provide proof of publication to the Commission. Spark is directed to provide proof of publication pursuant to Section 451.30(a).

#### **Subsection 451.30(c)**

Subsection 451.30(c)(3) provides that Proof that notification of an intent to serve in any utility's service area has been previously provided to the agent designated by the electric utility pursuant to 83 Ill. Adm. Code 215.10 of each electric utility in whose service area the applicant intends to serve.

Spark's amended application indicates that it sent one letter of notification to Ameren Transmission Services Business Center noting that it intends to serve all customers in CIPS, CILCO and IP service territories. Subsection 451.30(c)(3) requires each utility to be notified. Applicant is directed to submit letters of notification to each individual utility's designated agent in compliance with Subsection 451.30(c)(3), and to provide copies of such notifications in response to this ruling.

#### **Section 451.320(a)(5)(B) Financial Qualifications**

Section 451.320(a)(5)(B) provides that:

B) The amount of the line of credit or revolving credit agreement shall be no less than the greater of \$1,000,000 or 10% of the amount of the applicant's revenue for the most recently completed fiscal year. That amount of revenue must appear in the applicant's certified financial statements, or those of the applicant's parent, that have received an accountant's report that certifies those financial statements to be free of material misstatement. If the applicant is using the certified financial statements of its parent, the amount of credit available under the borrowing agreement shall be determined using the applicable revenue amount from the segment information section of the certified financial statements of the applicant's parent.

Applicant provided the same credit agreement in Confidential Attachment A previously provided. In addition, the Applicant provided a letter from Fortis Capital Corp. stating that Spark Energy, LP ("Spark") has an uncommitted Line of Credit with Fortis Capital Corp. ("Fortis") for power and is currently in compliance with the covenants required by Fortis in the credit agreement between Spark and Fortis.

The letter from Fortis did not specifically state an amount for the sole use of Applicant. 1) Applicant failed to identify the exact amount available to it under the credit agreement in Confidential Attachment A. 2) Furthermore, Applicant failed to demonstrate how that amount is available exclusively to Spark Energy, L.P. 3) It appears Applicant may be attempting to state that the entire \$25 million listed in the credit agreement can be used by Spark Energy, LP. (Amended Application, page 10, Para 19) In the event Applicant can prove the entire \$25 million is available to it under the credit agreement, Applicant would not have to calculate the exact amount. Applicant could prove this by providing a letter from Fortis stating the exact the amount in the credit agreement that is available exclusively to Spark Energy, L.P. and agree to provide this same information to the ICC's Chief Clerk's Office, on a quarterly basis, under Code Part 451. 4) In the event Applicant is able to demonstrate a specific amount, less than the entire \$25 million is available exclusively to it under the credit agreement; Applicant must provide this calculation with a detailed explanation of each input of the calculation.

As stated in the previous ruling, Spark must demonstrate that it can borrow no less than the greater of \$1,000,000 or 10% of the amount of the applicant's revenue for the most recently completed fiscal year.

#### **Section 451.510 Single Billing**

- a) The applicant may undertake to post and maintain a bond or bonds issued by a qualifying surety or financial institution chartered by the United States

or the State of Illinois in favor of any Illinois utility in whose service territory the applicant will serve retail customers. The bond or bonds shall be in an amount equal to 15% of a good faith estimate of the total amount that the applicant expects to be obliged to pay to the utility under single billing tariffs adopted pursuant to Section 16-118(b) of the Act during the next twelve months. The applicant shall provide a copy of the bonding agreement(s) and the bond(s) to the Commission with the application to provide single billing service. The bond(s) shall be conditioned on the full and timely payment of all amounts due to the utility in accordance with the terms specified in the single billing tariffs and shall be valid for a period of not less than one year.

Originally, Spark attempted to use its credit agreement to meet the financial requirements in Section 451.320(a)(5) and Single Billing requirements Section 451.510. The Applicant filed four separate bonds for Single Billing with its Amended Application. ("SB Bonds") The Applicant provided good faith estimates of the total amounts that the Applicant expects to be obliged to pay to the utility under single billing. (Amended Application, page 12, Para 24) The SB Bonds state, "NOW THEREFORE, the condition of the obligation is such that if the Principal shall pay or cause to be paid unto the Obligee all amount that may at any time hereafter be due and owing to the Obligee by the Principal for Utility Services furnished by the Obligee to the Principal, then this obligation shall be null and void; otherwise to remain in full force and effect." Since the SB Bonds are used solely for the Single Billing requirement, these SB Bonds must contain language referring specifically to single billing. Thus, Applicant is directed to submit bond(s) conditioned on the full and timely payment of all amounts due to the utility in accordance with the terms specified in the single billing tariffs.

## **Reciprocity**

In Attachment D to its amended application, Spark identifies five "Possible Sources of Supply." It does not appear that Spark has accurately reflected the correct corporate name of any possible source of power and energy. Additionally, Spark failed to demonstrate that any of the five entities on Attachment D to its amended application, or an affiliate thereof, actually meets the requirements of the reciprocity provisions in the Act as interpreted in Illinois Appellate Court decisions.

Specifically, Spark must demonstrate that it complies with three conditions: (1) the applicant, its corporate affiliates, or the applicant's principal source of electricity (to the extent such source is known at the time of the application) owns or controls facilities, for public use, for the transmission or distribution of electricity to end users within a defined geographic area to which electric power and energy can be physically and economically delivered by the electric utility or utilities in whose service area or

areas the proposed service will be offered, (2) the applicant, its corporate affiliates, or principal source of electricity, as the case may be, provides delivery services to the electric utility or utilities in whose service area or areas the proposed service will be offered that are reasonably comparable to those offered by the electric utility, and (3) the applicant agrees to annually certify that it, its corporate affiliates, or applicant's principal source of electricity is continuing to provide such delivery services and that it has not knowingly assisted any person or entity avoid the requirements of Section 16-115 of the Act.

These are the same requirements identified in the September 10, 2007 Administrative Law Judge's Ruling, which were established in the Appellate Court decision: *Local Union Nos. 15, 51 and 702, International Brotherhood of Electrical Workers v. Illinois Commerce Commission*, 265 Ill. Dec. 302, 772 N.E.2d 340 (2002) ("*IBEW*"). These requirements are currently applicable and if Spark wishes to pursue certification as an ARES in Illinois at this time it must demonstrate that it meets each of these three requirements.